



"Orphan" works: informal deal done between MEPs and Council

Committees: Committee on Legal Affairs

A photo, a film or a poem that is covered by a copyright, but whose right holder cannot be found, could be made publicly available across the EU, under draft legislation informally agreed by Parliament and Council representatives on Wednesday. This legislation would allow everyone to access such "orphan works" and take forward the project of making Europe's cultural heritage available online.

Lidia Geringer de Oedenberg (S&D, PL), who is steering the legislation through Parliament and led the negotiations, welcomed the deal as a: "first step towards harmonisation of copyright rules in the EU". "The regulation will promote culture and finally make it possible to make some hidden treasures available to the general public", she added at the end of the negotiating round.

Parliament's negotiating team secured provisions to make it safer and easier for public institutions such as museums and libraries to search for and use orphan works. These provisions include clear rules on compensation for right holders who come forward after a work has been placed on line and a possibility for institutions to use any revenue from its use to pay search and digitisation costs.

Today, digitising an orphan work can be difficult if not impossible, since in absence of the right holder there is no way to obtain permission to do so. The new rules would protect institutions using orphan works from future copyright infringement claims, and thus avoid court cases like that in the US, in which a Google project to digitise and share all kinds of books, including orphan works, was blocked on the grounds that the orphan works question should be settled by legislation, not private agreements.

"Diligent" search to protect copyright

According to the agreed text, a work would be deemed to be orphan if, after a "diligent" search made in good faith, it was not possible to identify or locate the copyright holder. The draft legislation lays down criteria for carrying out the search.

Works granted orphan status would be then made public, through digitisation and only for non-profit purposes. A work deemed to be "orphan" in any one Member State would be deemed as such throughout the EU. This would apply to any audiovisual or printed material, including a photograph or an illustration embedded in a book, published or broadcast in any EU country. It would also apply to works not published but nonetheless made available by institutions, provided that they could reasonably assume that the right holder would not object to this act.

Compensation if copyright holder shows up

MEPs agreed that the right holder should be entitled to put an end to the orphan status of a work at any time and claim an appropriate compensation for the use made out of it.

Press release

They nonetheless inserted a provision to protect public institutions from the risk of having to pay large sums to authors who show up later. compensation would have to be calculated case by case, taking account of the actual damage done to the author's interests and the fact that the use was non-commercial. This should ensure that compensation payments remain small.

Council representatives also agreed to a proposal by MEPs that a new article be inserted in the draft legislation to allow public institutions to generate some revenue from the use of an orphan work (e.g. goods sold in a museum shop). All of this revenue would have to be used to pay for the search and the digitisation process.

Next steps

The outcome will need final approval from the Committee on Legal Affairs, Parliament as a whole and in the Council.

Contact :

Federico DE GIROLAMO

BXL: (+32) 2 28 31389

STR: (+33) 3 881 72850

PORT: (+32) 498 98 35 91

EMAIL: lega-press@europarl.europa.eu